



DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL

COUNSEL FOR THE
NAVAL SURFACE WARFARE CENTER
PORT HUENEME DIVISION
Port Hueneme, California 93043-4307

5720
Ser 00L-MDR/017
17 May 2017

Anne Rivas
Bright Lights USA, Inc.
145 Shreve Avenue
Barrington, New Jersey 08007

Via Email: anner@brightlightsusa.com

Subj: Privacy Act (PA) / Freedom of Information Act (FOIA)
Request(s)

Dear Ms. Rivas:

This letter responds to Bright Lights USA, Inc.'s (BLUI) below referenced Freedom of Information Act (FOIA) requests. BLUI has requested copies of the following technical materials (DoD technical data):

FOIA Number	NSN	Part#
DON-NAVY-2016-007124	5855-01-439-0438	6886374 6886377 6886391
DON-NAVY-2016-007550 ¹	5365-01-330-1552	5189104
	5998-01-155-1999	5190104
	5998-01-198-0021	5190845
	5998-01-168-8376	5190735
	5996-01-212-6498	5190738
	5998-01-194-4060	5190739
	5998-01-169-1093	5190740
	5998-01-169-1094	5190741
		5190799
	5998-01-198-4118	5190812
		5190813
	5935-01294-2436	5190814
		5190815
	1285-01-197-9851	5190817
	5340-01-297-8425	5190821

¹ Note: NSWC PHD is only responding to that portion of FOIA request No. DON NAVY 2016- 007550 that has been determined to be in its cognizance.

FOIA Number	NSN	Part#
DON-NAVY-2016-007550 (cont.)	5998-01-338-3505	5190823
		5190824
	5340-01-212-1342	5190827
	5935-01-357-7248	5190837
	6110-00-306-0983	5190845
		5191026
	5998-01-234-4669	5193114
	5330-00-375-2949	5193116
	5998-01-234-4667	6166801

This response is made on behalf of the Commanding Officer, Naval Surface Warfare Center, Port Hueneme Division.

I am denying BLUI's request for documents under DON-NAVY-2016-007124 & DON-NAVY-2016-007550 pursuant to FOIA exemption (b)(3). Exemption 3 requires the withholding of information prohibited from disclosure by another statute provided that the statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5.U.S.C. 552(b)(3).

10 U.S.C. 130 and the Department of Defense (DoD) implementing directive, DoD 5230.25, prohibits disclosure of technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully outside of the United States without proper approval, authorization, or the United States without proper approval, authorization, or license under the Arms Export Control Act. 10 U.S.C. 130 is an exemption 3 statute.

The information BLUI has requested is technical data that (1) would require approval, authorization, or license for export under the Arms Export Control Act (22 U.S.C. 2751, et seq.) and (2) would disclose critical technology with military or space application.

DoD Directive 5230.25 requires that U.S. contractors be certified with the Defense Logistics Agency (DLA) Joint Certification Program to obtain technical documents containing critical technology from DoD sources. As the need arises for a company to obtain unclassified technical data for a proposal or

contract, the company shall complete the appropriate Data Request and submit it to the government agency which owns or controls the data required. As a minimum, the Data Request should include the following:

- A copy of the companies DD 2345;
- Detailed information on the data required;
- A statement of the intended data use.

As required BLUI has submitted its DD 2345; detailed information on the data required; and a statement of intended data use, but has not provided information related to which proposal or contract the technical data is needed. (See BLUI's above referenced FOIA requests)

BLUI's DD Form 2345 dated 18 April 2016 with expiration date 15 May 2021 which was submitted with its requests provides the following as the description of relevant business activity:

"MANUFACTURER AND DISTRIBUTOR OF MECHANICAL, ELECTROMECHANICAL AND MACHINED PARTS TO DEPARTMENT OF DEFENSE ACTIVITIES AND OTHER U.S. GOVERNMENT CONTRACTORS."

BLUI's description of the intended use provided is as follows: "JOBS & QUOTE."

DoD Directive 5230.24 requires all DoD Components that generate or are responsible for technical documents determine their distribution availability and mark them appropriately before primary distribution. Managers of technical programs are required to assign appropriate distribution statements to technical documents generated within their programs to control the secondary distribution of those documents. Therefore, technical data with military or space application also must be marked with a prescribed export warning statement, in addition to other markings authorizing or restricting secondary distribution.

The technical data subject to BLUI's requests is marked with a distribution statement, i.e., "DISTRIBUTION D. Distribution authorized to Department of Defense and U.S. DoD contractors only...", to control the secondary distribution of the same and also with the prescribed export warning statement. Therefore, additional information is required in order to approve the release of the requested technical data to BLUI, e.g., a specifically identified proposal or contract.

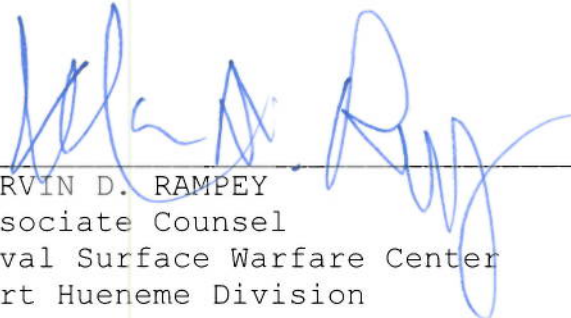
Accordingly, since this information is prohibited from public disclosure under 10 U.S.C. 130, I am denying BLUI's FOIA requests under exemption (b)(3).

You may either submit a new request with the additional information described in this letter, or appeal the denial of your request. Should you choose to submit a new request, please submit it to: Marvin D. Rampey, Associate Counsel, NSWC PHD, Office of Counsel, 4363 Missile Way, Bldg.445-Rm.28, Port Hueneme, CA 93043-5007.

Should you choose to pursue an appeal, please submit it in writing to Department of the Navy, Office of General Counsel, ATTN: FOIA/PA Appeals Office, 1000 Navy Pentagon, Room 5A532, Washington, D.C. 20350-1000. Your appeal must be postmarked within 60 calendar days from the date on this letter to be considered. A statement as to why your appeal should be granted should be included and an enclosed copy of this letter should be attached along with your original request. Both the appeal letter and the envelope should bear the notation, "**FREEDOM OF INFORMATION ACT APPEAL.**"

For this determination, you have the right to seek dispute resolution services from the DoD Navy Component FOIA Public Liaison, Mr. Chris Julka, at Christopher.a.julka@navy.mil or (703) 697-0031.

In accordance with SECNAVINST 5720.42F all applicable fees involved in the processing of your request are waived because the assessable costs were \$15 or less.



MARVIN D. RAMPEY
Associate Counsel
Naval Surface Warfare Center
Port Hueneme Division